

FCC Received December 29, 1993 @ 2:00 p.m.  
Dena A. Bradshaw

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TRANSCRIPT OF PROCEEDINGS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

IN THE MATTER OF:  
  
PETROLEUM V. NASBY CORPORATION  
  
Shelby, Ohio

MM DOCKET NO. 93-135

RECEIVED

JAN 10 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554  
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In the matter of: )

THE PETROLEUM V. NASBY CORPORATION )

MM DOCKET NO. 93-135

Shelby, Ohio )  
-----)

The above-entitled matter come on for hearing pursuant to Notice before Judge Edward Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Tuesday, December 14, 1993, at 10:00 a.m.

**APPEARANCES:**

On behalf of Petroleum V. Nasby:

HARRY F. COLE, Esquire  
ANN C. FARHAT, Esquire  
Bechtel & Cole, Chartered  
1901 L Street, N.W., Suite 250  
Washington, D.C. 20036

On behalf of Mass Media:

PAULETTE LADEN, Esquire  
Mass Media Bureau  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20554

## I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Timothy J. Moore				
By Ms. Farhat	30		64	
By Ms. Laden		52		69
David L. Williamson				
By Ms. Farhat	70		85	
By Ms. Laden		84		86
Michael J. Adelman				
By Ms. Farhat	88			

## E X H I B I T S

<u>Mass Media Bureau:</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
Exhibit No. 1	17	17	
Exhibit No. 2	17	18	
Exhibit No. 3	18	20	
Exhibit No. 4	18	20	
Exhibit No. 5	18	20	
Exhibit No. 6	18	20	
Exhibit No. 7	18	20	
Exhibit No. 8	18	20	
Exhibit No. 9	18	20	
Exhibit No. 10	18	20	
Exhibit No. 11	21	22	
Exhibit No. 12	22	23	

Joint:

Exhibit No. 1	24	24	
<u>Petroleum V. Nasby</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
Exhibit No. 1	26	52	
Appendix A			47
Appendix B			50
Appendix C		51	
Exhibit No. 2	26		
Exhibit No. 3	27	92	
Exhibit No. 4	27	96	
Exhibit No. 5	28	29	

Hearing began: 10:00 a.m.

Hearing Ended: 12:21 p.m.

## P R O C E E D I N G S

JUDGE LUTON: -- starting at my left.

MS. LADEN: For the Chief of the Mass Media Bureau,  
Paulette Laden.

MS. FARHAT: For the Petroleum V. Nasby Corporation,  
good morning, Your Honor. My name is Ann C. Farhat. And with  
me is Harry F. Cole of the law firm of Bechtel & Cole,  
Chartered.

JUDGE LUTON: Thank you. I have the direct case  
exhibits submitted by Nasby and by the Mass Media Bureau.  
Notice that the -- I believe the Bureau was given the burden  
of proceeding on an issue here. With respect to issue one,  
the Bureau wish to take that first or --

MS. LADEN: It's up to you, Your Honor. We could go  
first.

JUDGE LUTON: All right. Let's do it that way.

MS. LADEN: Okay. Your Honor, let the record  
reflect, please, that I'm giving the court reporter two copies  
of Mass Media Bureau's exhibits.

(Pause.)

MS. LADEN: Your Honor, the Bureau's exhibits  
consist of 12 Exhibits, Mass Media Bureau exhibits. I would  
like to have marked for identification as Mass Media Bureau  
Exhibit 1 a certified copy of an indictment in criminal case  
no. 90-0134, United States of America v. Thomas L. Root, in

1 the District Court of the District of Columbia. That exhibit  
2 consists of 45 pages.

3 JUDGE LUTON: It's marked as 1.

4 (Whereupon, the document referred to  
5 as Mass Media Exhibit No. 1 was  
6 marked for identification.)

7 MS. LADEN: I'd like to offer Mass Media Bureau  
8 Exhibit 1.

9 JUDGE LUTON: Any objection to 1?

10 MS. FARHAT: No, Your Honor.

11 JUDGE LUTON: One is received.

12 (Whereupon, the document referred to  
13 as Mass Media Exhibit No. 1 was  
14 received into evidence.)

15 MS. LADEN: Mass Media Bureau Exhibit 2 I would like  
16 to have marked. It's a certified copy of indictment in  
17 criminal case no. 90-0376, United States of America v. Thomas  
18 L. Root, in the District Court of the Southern District of  
19 Illinois. That exhibit consists of five pages.

20 JUDGE LUTON: It will be marked as 2.

21 (Whereupon, the document referred to  
22 as Mass Media Exhibit No. 2 was  
23 marked for identification.)

24 MS. LADEN: And I'd like to offer Mass Media Bureau  
25 Exhibit 2.

1 JUDGE LUTON: Two is offered. Any objection?

2 MS. FARHAT: No, Your Honor.

3 (Whereupon, the document referred to  
4 as Mass Media Exhibit No. 2 was  
5 received into evidence.)

6 JUDGE LUTON: Now what's presently being offered and  
7 what appears to me are the things that are going to be offered  
8 by the Bureau are certified copies of indictments and  
9 judgments and such things. They're all certified. Any  
10 objection to any of these things as we go through?

11 MS. FARHAT: Not, not to items 1, Exhibits 1 through  
12 10, Your Honor.

13 JUDGE LUTON: All right. Ms. Laden, perhaps we can  
14 just offer them all at one time.

15 MS. LADEN: Okay.

16 JUDGE LUTON: Mark them separately --

17 MS. LADEN: I'd like to offer then Exhibits, Mass  
18 Media Bureau Exhibits 1 through 10.

19 JUDGE LUTON: We'll mark them. Why don't you just  
20 proceed, identify 3 through 10.

21 (Whereupon, the documents referred to  
22 as Mass Media Exhibits Nos. 3 through  
23 10 were marked for identification.)

24 MS. LADEN: Okay. Mass Media Bureau Exhibit 3 is a  
25 certified copy of judgment in criminal case no. 90-0134 and

1 90-0376, United States of America v. Thomas L. Root. The  
2 Exhibit also contains a sentencing report and related  
3 memorandum. It has four pages. Actually, I don't think it  
4 has the sentencing. I could be wrong.

5 JUDGE LUTON: I think it does not. I didn't see it  
6 as I looked through here.

7 MS. LADEN: Yeah. I believe we deleted the  
8 sentencing report. It consists of four pages. And Exhibit  
9 No. 4 is a certified copy of indictment, transcript of plea,  
10 dismissal as to count three, judgment and commitment in file  
11 nos. 90-CRS-8496, State of North Carolina v. Thomas L. Root,  
12 seven pages.

13 Exhibit No. 5 is the certified copy of indictment,  
14 transcript of plea and judgment and commitment in file nos.  
15 90-CRS-8497, 9155, 9156, 9157, State of North Carolina v.  
16 Thomas L. Root. It consists of 41 pages.

17 Mass Media Bureau Exhibit No. 6 is a certified copy  
18 of indictment, transcript of plea and judgment and commitment  
19 in file nos. 90-CRS-8498, 9158, 9159, 9160, State of North  
20 Carolina v. Thomas L. Root. It consists of 106 pages.

21 Mass Media Bureau Exhibit 7 is a certified copy of  
22 superseding indictment in case no. CRC-90-13295CFANO, State of  
23 Florida v. Thomas L. Root, no. 1129047. It consists of 50  
24 pages.

25 Mass Media Bureau Exhibit No. 8 is a certified copy

1 of plea form of Thomas L. Root and plea agreement in case no.  
2 CRC90-13295CFANO, no. 1129047, State of Florida v. Thomas L.  
3 Root. It consists of seven pages.

4 Mass Media Bureau Exhibit 9 is a certified copy of  
5 judgment and sentence in case no. CRC90-13295CFANO, no.  
6 1129047, State of Florida v. Thomas L. Root consisting of 11  
7 pages.

8 And Mass Media Bureau Exhibit 10 is a certified copy  
9 of judgment, sentence and order placing defendant on probation  
10 during portion of sentence in case no. CRC90-13295CFANO-D,  
11 State of Florida versus -- pardon me. State of Florida v.  
12 Thomas L. Root. It consists of three pages.

13 And Your Honor, I'd like to offer Mass Media Bureau  
14 Exhibits -- I believe you received Exhibits 1 and 2. I would  
15 like to offer Exhibits 3 through 10.

16 JUDGE LUTON: All right, 3 through 10 as identified  
17 by the Mass Media Bureau are marked and there being no  
18 objection are received in evidence.

19 (Whereupon, the documents referred to  
20 as Mass Media Exhibits Nos. 3 through  
21 10 were received into evidence.)

22 MS. LADEN: There are two exhibits that consist of  
23 assignment applications, Mass Media Bureau Exhibit 11,  
24 application for transfer of control of the Petroleum V. Nasby  
25 Corporation, licensee of station WSWR-FM, Shelby, Ohio. The



1 assignment -- this assignment application -- the transfer of  
2 shares by Thomas L. Root individually and as a custodian for  
3 the benefit of his minor children and Kathy G. Root to Kathy  
4 G. Root individually and as custodian for the benefit of her  
5 minor children to Arlene M. Geer as trustee for the benefit of  
6 the minor, minor children of Thomas L. and Kathy G. Root and  
7 to Joanne L. and Thomas F. Root jointly. File no.  
8 BPCH921019HX. That application for transfer of control  
9 consists of 74 pages. And I'd like to have that marked for  
10 identification, Your Honor.

11 JUDGE LUTON: Eleven is marked.

12 (Whereupon, the document referred to  
13 as Mass Media Exhibit No. 11 was  
14 marked for identification.)

15 MS. LADEN: I'd like to offer Mass Media Bureau  
16 Exhibit 11?

17 JUDGE LUTON: Objection?

18 MS. FARHAT: Your Honor, I have no objection other  
19 than to just point out that yesterday I filed a corrected  
20 amendment to the, to that exhibit and informally prior to the  
21 hearing today I discussed it with Ms. Laden as to whether or  
22 not we should include that as part of this exhibit or to make  
23 it a separate exhibit. And we decided to make it a separate  
24 exhibit if that's all right with Your Honor.

25 JUDGE LUTON: Whose exhibit will it be?

1 MS. FARHAT: It will be my PVN exhibit, so we can  
2 deal with that at the time.

3 JUDGE LUTON: All right. In the meantime, 11 is  
4 received.

5 (Whereupon, the document referred to  
6 as Mass Media Exhibit No. 11 was  
7 received into evidence.)

8 MS. LADEN: I'd like to have marked for  
9 identification as Mass Media Bureau 12 application for  
10 transfer of control of the Petroleum V. Nasby Corporation,  
11 licensee of station WSWR-FM, Shelby, Ohio. This application  
12 reflects a proposed transfer of 70.25 shares of stock in the  
13 licensee corporation from Joanne L. and Thomas F. Root jointly  
14 to Ginzburg, Feldman & Bress, Chartered. The file number of  
15 the application is BTCH921019HY. And it consists of 44 pages.

16 JUDGE LUTON: All right, 12 is marked. And was it  
17 offered?

18 (Whereupon, the document referred to  
19 as Mass Media Exhibit No. 12 was  
20 marked for identification.)

21 MS. LADEN: I'd like to offer --

22 JUDGE LUTON: All right.

23 MS. LADEN: -- Mass Media Bureau Exhibit --

24 JUDGE LUTON: It's offered. Any objection?

25 MS. FARHAT: No, Your Honor.

1 JUDGE LUTON: Twelve is received. And that  
2 concludes the Bureau's evidentiary offerings.

3 (Whereupon, the document referred to  
4 as Mass Media Exhibit No. 12 was  
5 received into evidence.)

6 MS. LADEN: Yes, it does, Your Honor. I forgot to  
7 mention one thing I'd like to make clear for the record.  
8 Some -- when, when the index indicates 44 pages in the  
9 pagination and the identification, in cases where the pages  
10 are double-sided we've paginated them for example 22A, 22B.

11 JUDGE LUTON: Okay.

12 MS. LADEN: So whenever there is an A, there's a  
13 back side to it.

14 JUDGE LUTON: All right. The Bureau's exhibits are,  
15 are received. We'll move now to Nasby's case.

16 MS. FARHAT: Your Honor, I previously provided the  
17 court reporter with the original and one copy of Joint Exhibit  
18 No. 1, stipulation of facts which had been entered into by the  
19 Hearing Branch of the Mass Media Bureau of the Federal  
20 Communications Commission and the Petroleum V. Nasby  
21 Corporation. Is a five-page inlaid stipulation. At this  
22 time, I would like to offer it into evidence.

23 JUDGE LUTON: All right. This was supplied to me  
24 under cover letter dated November 23, 1993. Is that the one?

25 MS. FARHAT: Yes, Your Honor.

1 JUDGE LUTON: It is. All right. Joint Exhibit 1,  
2 stipulation of fact, stipulations of fact, and there are --

3 MS. FARHAT: Thirty-two stipulations.

4 JUDGE LUTON: Thirty-two such stipulations  
5 representing matters that the Bureau and Nasby have agreed  
6 upon. It's offered and it's received as Joint Exhibit 1.

7 (Whereupon, the document referred to  
8 as Joint Exhibit No. 1 was marked for  
9 identification and received into  
10 evidence.)

11 MS. FARHAT: Your Honor, I have also previously  
12 provided the court reporter with original and one copy of the  
13 directorate and exhibits of the Petroleum V. Nasby Corporation  
14 which were previously exchanged with the Mass Media Bureau on  
15 November 23rd, 1993 and a copy also provided to you on that  
16 date. I'm not sure how Your Honor wishes to proceed in this  
17 respect.

18 I have three sponsoring witnesses here, because Ms.  
19 Laden had reserved her right to cross-examine them. And I  
20 don't know if it would be easier to mark all of them or just  
21 mark those exhibits which relate to the testimony of the  
22 individuals in the course of their, their being placed on the  
23 witness stand. We could mark them all, Your Honor. And I  
24 guess I could move for admission at the appropriate times.

25 JUDGE LUTON: Why don't you decide how you want to

1 do it?

2 MS. FARHAT: Okay. That would be fine just to  
3 proceed I guess to mark them and then move for their admission  
4 in connection with the --

5 JUDGE LUTON: With each witness.

6 MS. FARHAT: Yes.

7 JUDGE LUTON: All right.

8 MS. FARHAT: Okay. The, the first Petroleum V.  
9 Nasby Exhibit No. 1 I've requested that be marked. It's  
10 identified as Petroleum V. Nasby Exhibit No. 1. It's the  
11 testimony of Timothy J. Moore which consists of 10 pages.

12 In addition to that testimony, there are three  
13 appendices which are attached to Mr. Moore's testimony.  
14 Appendix A are community leader, declarations of community  
15 leaders and consist of 31 pages. Appendix B are letters from  
16 the public relating to the program services of station WSWR  
17 which consists of 167 pages. And Appendix C originally  
18 exchanged, Your Honor, include income and balance statements  
19 and related cash flow information of Petroleum V. Nasby  
20 Corporation from 1981 through September 30th, 1993.

21 The original and one copy of this exhibit, Your  
22 Honor, also contains additional pages which I have provided to  
23 Ms. Laden today as well as a copy before you, Your Honor. And  
24 it's identifying this as a -- it would be pages 63 through 77  
25 of that exhibit. And what they consist of are the 1990, 1991

1 and 1992 Federal Income Tax Returns for the station. And I  
2 believe that this information is also appropriate to be  
3 considered in connection with, with the materials previously  
4 submitted.

5 JUDGE LUTON: So --

6 MS. FARHAT: So that the --

7 JUDGE LUTON: -- to Exhibit 1 for identification  
8 there will be -- is this a third appendix?

9 MS. FARHAT: Actually Appendix C already exists.  
10 It's just an addition to that appendix.

11 JUDGE LUTON: An addition to that Appendix C. I  
12 see. Okay.

13 MS. FARHAT: Adding pages 63 through 77.

14 JUDGE LUTON: Okay.

15 (Whereupon, the document referred to  
16 as Petroleum V. Nasby Exhibit No. 1  
17 was marked for identification.)

18 (Pause.)

19 JUDGE LUTON: Okay.

20 MS. FARHAT: The next exhibit is Petroleum V. Nasby  
21 Exhibit No. 2, the testimony of David L. Williamson which  
22 consists of 10 pages.

23 JUDGE LUTON: That's marked as 2 for identification.

24 (Whereupon, the document referred to  
25 as Petroleum V. Nasby Exhibit No. 2

1 | was marked for identification.)

2 (Pause.)

3 JUDGE LUTON: That's marked. Go ahead.

4 MS. FARHAT: Okay. The next item, Your Honor, to  
5 be -- that I request to be marked as Petroleum V. Nasby  
6 Corporation Exhibit No. 3 is the testimony of Michael J.  
7 Adelman which consists of six pages.

8 JUDGE LUTON: All right. Mr. Adelman's testimony is  
9 marked as 3 for identification.

10 (Whereupon, the document referred to  
11 as Petroleum V. Nasby Exhibit No. 3  
12 was marked for identification.)

13 MS. FARHAT: The next item I request, Your Honor, to  
14 be identified as Petroleum V. Nasby Corporation Exhibit No. 4  
15 is the testimony of Kathy G. Root, and it consists of three  
16 pages.

17 JUDGE LUTON: All right. The testimony is marked as  
18 4 for identification.

19 (Whereupon, the document referred to  
20 as Petroleum V. Nasby Exhibit No. 4  
21 was marked for identification.)

22 MS. FARHAT: Thank you, Your Honor. And I believe  
23 the last item to be marked for identification is Petroleum V.  
24 Nasby Corporation Exhibit No. 5 which consists of an amendment  
25 to file no. BTCH921019HX which is the initial application for

1 transfer. And this as I mentioned earlier, Your Honor, was  
2 not previously exchanged but updates and corrects the Mass  
3 Media Bureau Exhibit No. 11. And we request that this also be  
4 included in the record.

5 JUDGE LUTON: And this will be 5. All right, 5 is  
6 marked. Okay.

7 (Whereupon, the document referred to  
8 as Petroleum V. Nasby Exhibit No. 5  
9 was marked for identification.)

10 MS. FARHAT: Not to -- in, in conversations with Ms.  
11 Laden prior to the hearing today, Your Honor, I believe it's  
12 Ms. Laden's position that the last exhibit, Exhibit No. 5,  
13 she'll have no objection to as well as the additional  
14 information that I have submitted in connection with Appendix  
15 C of Joint Exhibit No. 1, the additional pages. So if we can  
16 we could go ahead and seek to move those into evidence and  
17 then go with the testimony of the witnesses.

18 JUDGE LUTON: Is that correct, first of all, what  
19 she said?

20 MS. LADEN: Yes, Your Honor. In fact, we don't have  
21 an objection to Appendix C at all. But we have objections to  
22 other parts of Exhibit 1.

23 JUDGE LUTON: Okay.

24 MS. LADEN: And we have no objection to Exhibit 5.

25 JUDGE LUTON: Okay. I can receive 5 then.



1 (Whereupon, the document referred to  
2 as Petroleum V. Nasby Exhibit No. 5  
3 was received into evidence.)

4 JUDGE LUTON: And Appendix C, you say there is no  
5 objection to C?

6 MS. LADEN: That's correct.

7 JUDGE LUTON: There is no objection to Appendix C of  
8 exhibit -- what is that, Exhibit 1 that would be. Yeah,  
9 Exhibit 1. How about the rest of it? Well, I don't want to  
10 get confused here. Why don't just, just --

11 MS. FARHAT: I'll move forward now.

12 JUDGE LUTON: -- move the things.

13 MS. FARHAT: I'll try to get rolling, Your Honor.

14 JUDGE LUTON: -- about which there are, are no  
15 objections I suppose, and then you tell me what they are.

16 MS. FARHAT: Yeah. I think -- I believe that may be  
17 the only ones, Your Honor. Okay. At this point in time, Your  
18 Honor, I'd like to offer into evidence -- I'm sorry. Your  
19 Honor, I'd like to request that Timothy J. Moore take the  
20 witness stand so that we can move into evidence his exhibit.

21 JUDGE LUTON: All right, Mr. Moore. If you would  
22 take the stand please.

23 Whereupon,

24 TIMOTHY J. MOORE

25 having been first duly sworn, was called as a witness herein

1 and was examined and testified as follows:

2 DIRECT EXAMINATION

3 MS. FARHAT: Your Honor, at this time I --

4 BY MS. FARHAT:

5 Q Well, Mr. Moore, would you please state your name  
6 and address for the record?

7 A Name is Timothy J. Moore. Address is 320 Willow  
8 Drive, Plymouth, Ohio.

9 Q In front of you would you please turn to Petroleum  
10 V. Nasby Exhibit No. 1. Have you reviewed this exhibit, Mr.  
11 Moore?

12 A Yes.

13 Q Okay. Are there any changes that you can think that  
14 should be made to this exhibit?

15 A No, ma'am.

16 Q You have to speak up so that --

17 A I'm sorry.

18 Q -- we can all hear you.

19 MS. FARHAT: Okay. At this time, Your Honor, I move  
20 to offer into evidence the testimony of Timothy J. Moore.

21 JUDGE LUTON: All right. The Bureau has indicated  
22 that it has some objections to this offering.

23 MS. LADEN: Yes, Your Honor, we do. At paragraph 2,  
24 we object to the entirety of that paragraph as irrelevant. At  
25 least it's not clear to me what purpose this paragraph is

1 being offered.

2 JUDGE LUTON: I view it only as telling us perhaps  
3 in more detail than we need for the proceeding who the witness  
4 is and where he's been. But certainly no more than that. I  
5 don't see that it has any bearing on the issues. So in one  
6 sense it's irrelevant. But in another it is relevant in that  
7 it identifies the witness and tells us something about him.

8 I think the information given is really quite  
9 harmless to anybody's case. Consequently, I'll overrule that  
10 objection and permit paragraph 2 to stand.

11 MS. LADEN: Okay. Your Honor, I have an objection  
12 to all of Exhibit -- all of paragraph 3. Paragraph 3  
13 discusses Mr. Moore's individual community and civic  
14 activities. It also discusses the station's programs, service  
15 and participation in the community. And that is irrelevant to  
16 the case, Your Honor.

17 And I direct Your Honor's attention to the Oil Shale  
18 case at 52 FCC 2nd. 1167 which held at page 1169. That's a  
19 Review Board case from 1975, Your Honor. That case held that  
20 no evidence of community service or non-programming service  
21 should be allowed in mitigation. I assume this is offered for  
22 purposes of mitigation.

23 MS. FARHAT: Your Honor, may I address that?

24 JUDGE LUTON: Yes.

25 MS. FARHAT: Okay. Your Honor, it's not -- in some

1 respects it's offered for purposes of mitigation but not in  
2 the sense of that Nasby believes it's engaged in any licensing  
3 misconduct, because it's our position that we have not.

4 But to the extent the Bureau seeks to impose the,  
5 the individual actions of Thomas L. Root in matters to which  
6 the Bureau has stipulated are totally unrelated to the station  
7 and to the, and to the corporation other than Mr. Root's  
8 former interest, we believe that this type of information is  
9 relevant in the context of how the station is operating in the  
10 public interest and in the market. We don't believe that,  
11 that the record should be unnecessarily precluded from, from  
12 showing this information.

13 MS. LADEN: Your Honor, this is not a comparative  
14 renewal. There's no renewal expectancy --

15 JUDGE LUTON: That's what bothers me. And I wonder  
16 about the effort to show the station as being operated in the  
17 public interest whether that, that is really a concern.

18 MS. FARHAT: Your Honor, may I address that?

19 JUDGE LUTON: I suppose it is in a sense, but I'm  
20 not sure that it is outside of the, the way in which that  
21 concept is comprehended by the hearing designation order. The  
22 designation order didn't turn us loose to conduct a  
23 generalized inquiry about whether this station is being  
24 operated in the public interest. More limited than that as I  
25 view the matter. Yes.

1 MS. FARHAT: May I address it, Your Honor?

2 JUDGE LUTON: Please.

3 MS. FARHAT: The, the hearing designation order  
4 which the Bureau drafted and was adopted by the Commission  
5 also had no showing of misconduct by Nasby in its individual  
6 station operations. And I think it's -- but at the same time  
7 they're trying to put the, the misconduct of Mr. Root in  
8 matters which the Bureau has stipulated are totally unrelated  
9 to the station, they're trying to impose those on us without  
10 regard to the fact that the station is an existing station,  
11 has been controlled and managed and operated by people other  
12 than Mr. Root.

13 And I don't think the character qualifications --  
14 the issues of character have been raised. And I think it's  
15 important to show that there really isn't any question that  
16 there's misconduct that's been engaged by the station more so  
17 than it was engaged in by Mr. Root in another arena.

18 MS. LADEN: Your Honor, I --

19 JUDGE LUTON: This doesn't say anything about Mr.  
20 Root, does it, the paragraph that we're squabbling about? It  
21 just simply talks about how wonderful the station has been.  
22 You say that there's been some effort by the Bureau to  
23 attribute some of Root's activities to the station. I don't  
24 know whether that's true or not. But even accepting for the  
25 moment that it is, I don't see that what's offered here in

1 three addresses that in any way at all. How does it?

2 MS. FARHAT: Well, Your Honor, to the extent that  
3 they may try to use and argue in findings and conclusions that  
4 Mr. Root's actions took place and just to, to arbitrarily  
5 impute his actions to the station I think it's necessary to  
6 show that the station not only didn't engage in any misconduct  
7 but it also conducts itself and is well-received in the  
8 community so that if there is some determination at a later  
9 date, some penalty, this is more to mitigation the potential  
10 penalty that, that you're talking about taking a station away  
11 that served the public.

12 JUDGE LUTON: Then you bump into the case citation  
13 that Ms. Laden led off with, do you not?

14 MS. LADEN: In the Bureau's opinion, yes, Your  
15 Honor. I think --

16 JUDGE LUTON: I think you do.

17 MS. LADEN: I, I believe that case is, is very clear  
18 that you cannot receive evidence of community service or non-  
19 programming evidence to mitigate.

20 MS. FARHAT: Your Honor, may I address that one  
21 question?

22 JUDGE LUTON: Yes.

23 MS. FARHAT: Okay. I'm not familiar with that case.  
24 I am familiar with other cases where I understand for purposes  
25 of meritorious programming that in certain instances that kind

1 of program may or may not be used for mitigation. But as I've  
2 indicated here, in cases such as those and possibly this Oil  
3 Shale case which I am not familiar with, because there has  
4 been misconduct at a station in one instance or in this case  
5 there's been misconduct by someone who's not attributable or  
6 directly involved in the station operations I think the  
7 context to which the station operates to show that not only is  
8 there no allegation of misconduct but also that the station  
9 operates in a realm that it, it goes to serve the public. I  
10 just think it's important to show the balance.

11 JUDGE LUTON: You have anymore, Ms. Laden?

12 MS. LADEN: Yeah, I did want to clarify something.  
13 I'm not -- Ms. Farhat referred to a stipulation where the  
14 Bureau stipulated that Mr. Root's misconduct was unrelated to  
15 the station. I'm not familiar with that stipulation. I  
16 believe the issues in the case are the effect of Mr. Root's  
17 misconduct on the, on the station.

18 MS. FARHAT: Your Honor, paragraph 13 or stipulation  
19 13 --

20 JUDGE LUTON: Okay, I'm not going to get off into  
21 that at the moment --

22 MS. FARHAT: Sure.

23 JUDGE LUTON: -- whatever the difference in views  
24 between counsel is it will just stand. I'm going to, to grant  
25 the motion to strike paragraph 3. I don't believe that it is

1 relevant to what we're concerned with in this case. Other  
2 objections? This is on Exhibit 1.

3 MS. LADEN: Your Honor, some of the appendices  
4 relate to this matter. But, but I think I would rather go on  
5 in the order in which the pages appear and deal with the  
6 appendices after we deal with the body of the exhibit. Is  
7 that okay?

8 JUDGE LUTON: It is okay.

9 MS. LADEN: Paragraph 4, Your Honor, I have -- we  
10 have an objection to paragraph 4. It talks about the  
11 participation or lack thereof of Thomas L. Root in the  
12 operation of the station. And I believe that that is  
13 irrelevant, Your Honor.

14 And, and I cite two cases for that proposition. One  
15 is TV 9, Inc. which is a Court of Appeals decision. I don't  
16 have the citation right at the moment. But I'll locate it  
17 and, and provide it. And the other case is Marr Broadcasting  
18 which is a Commission case.

19 In TV 9 it was held that the removal of a wrongdoer  
20 would not moot a character issue. And in the Marr  
21 Broadcasting case, the Commission rejected a settlement  
22 agreement which would have involved the continuing  
23 participation of an owner who was insulated under the  
24 attribution rules. And the Commission held that the  
25 attribution rules did not insulate a character problem



1 associated with an insulated --. I believe that was a limited  
2 finding. In any event, it was someone whose ownership was not  
3 attributed for purposes of the Commission's rules.

4 I believe those two cases make clear, Your Honor,  
5 that the degree of participation by the wrongdoer in the  
6 station is irrelevant under the character policy --

7 JUDGE LUTON: I mean it may be irrelevant to  
8 assuming that your citations stem from propositions in which  
9 you stated them that --

10 MS. LADEN: I have those --

11 JUDGE LUTON: That the -- sorry. I'm thinking out  
12 loud here. Agree showing separation may not be enough to  
13 wholly overcome the character question. But do those cases  
14 say that such a proffer is inadmissible even for purposes of  
15 mitigation? I don't think so.

16 And then I would wonder how in the world is Nasby  
17 going to show much of anything here if it isn't able to show  
18 to some extent what it claims is separation between the  
19 activities of Root and the operation of the station. I think  
20 that at worst I suppose or at best, depending upon your view,  
21 the evidence that's offered may not go the whole way toward  
22 settling the issue. But I think it ought to go some way  
23 toward settling the issue. Consequently without hearing a  
24 response, I'm going to rule in favor of Nasby on this and  
25 permit 4 to stand.